

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION **RECEIVED**

PAUL DALE WOLFE, #215433, )  
)  
Petitioner, )  
)  
vs. ) CIVIL ACTION NO.  
) 2:05-CV-742-D  
)  
J.C. GILES, et. al., )  
)  
Respondents. )

2005 NOV -2 P 4: 16

DEBRA P. HACKETT, CLC  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA.

**RESPONDENTS' SUPPLEMENTAL ANSWER  
TO COURT'S ORDER**

Come now Respondents, in the above case, and file their supplemental answer in response to this Court's Order dated October 5, 2005. In support of their answer, Respondents present the following answer.

1. Respondents adopt the Procedural History as presented in their answer dated September 27, 2005.
2. In compliance with this Court's October 5, 2005 order, attached, as Respondents' Exhibit C, is the complete file from Barbour County case CC-05-84. Included within Exhibit C is the state habeas corpus petition filed by Wolfe.
3. A review of Respondents' Exhibit C reveals that Circuit Judge Burt Smithart ordered that Wolfe's state habeas corpus petition be transferred to the Montgomery County Circuit Court and treated as a Rule 32 petition since Wolfe's

claims related to his 2004 conviction and sentence. Judge Smithart's order is in compliance with Rivera v. State, 615 So. 2d 659 (Ala. Crim. App. 1992); and Hernandez v. State, 602 So. 2d 911 (Ala. Crim. App. 1992). Therefore, Respondents accept that Wolfe's state habeas corpus petition should be deemed properly filed as he timely filed his post-conviction petition within the one-year statute of limitation for Rule 32 petitions. See Rule 32.2(c), Alabama Rules of Criminal Procedure.

4. Wolfe's state habeas corpus petition, however, was not transferred as ordered due to a confusion with the clerk's file in Barbour County.

5. Undersigned counsel spoke with "Tina", an Assistant Barbour County Circuit Clerk, about the transfer of Wolfe's case. The case was not transferred because the clerk's office mistakenly thought the Court of Criminal Appeals's order dated April 27, 2005, dismissed Wolfe's state habeas corpus petition. The Court of Criminal Appeals's dismissal order, however, related to Wolfe's mandamus petition, which was the subject of the appeal in CR-04-1293. (Exhibit C)

6. After speaking with Tina, the Barbour County Circuit Clerk's Office is working to correct the mistake. Wolfe's state habeas corpus petition should be transferred to the Montgomery County Circuit Court no later than Friday, November 4, 2005. Respondents will receive written notification of the transfer

from the Barbour County Circuit Clerk's Office. Once notification is received, a copy will be filed with this Court.

7. Therefore, Respondents request that this Court refrain from ruling in this case for at least 30 days to allow undersigned counsel to verify: 1) Wolfe's state habeas corpus has been transferred from the Barbour County Circuit Court to the Montgomery County Circuit Court; and 2) Wolfe's post-conviction proceeding is docketed in the Montgomery County Circuit Court.

8. Once the transfer and docket process is completed, undersigned counsel will file any additional pleadings in this case necessary to finalize a ruling by this Court on Wolfe's federal habeas corpus petition filed in this cause.

Wherefore Premises Considered, Respondents request that this Court hold this case in abeyance for 30 days to finalize the transfer and docketing of Wolfe's state habeas corpus petition that is to be treated as a Rule 32 petition.

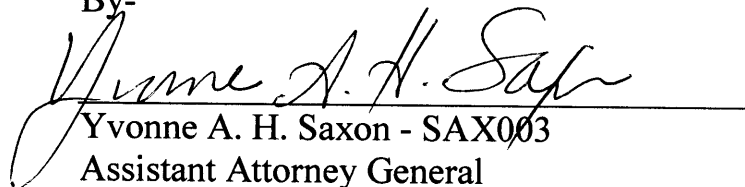
**EXHIBIT**

C - Barbour County Clerk's file in CC-05-84.

Respectfully submitted,

Troy King  
Attorney General

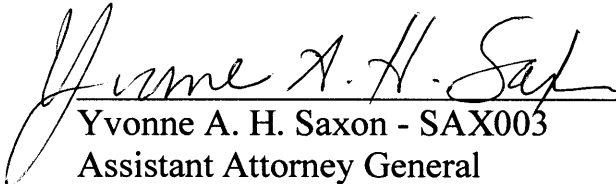
By-

  
Yvonne A. H. Saxon - SAX003  
Assistant Attorney General

## CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of November, 2004, I served a copy of the foregoing on Wolfe, by placing the same in the United States Mail, first class, postage prepaid and addressed as follows:

Paul Dale Wolfe  
#215433  
P. O. Box 767  
Clayton, AL 36016

  
Yvonne A. H. Saxon - SAX003  
Assistant Attorney General

### ADDRESS OF COUNSEL:

Office of the Attorney General  
Criminal Appeals Division  
11 South Union Street  
Montgomery, AL 36130  
(334) 242-7300

227581/84547-001